

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

TIMOTHY J. UPCHURCH,

Plaintiff,

v.

TIMOTHY M. O'BRIEN,

Case No. 3:19-cv-00165

MARGARET M. O'BRIEN,

ALBERT D. MOUSTAKIS,

STEVEN M. LUCARELLI,

SHERIFF JOSEPH FATH,

DEPUTY SHERIFF ERIC NEFF,

and

DEPUTY SHERIFF RANDALL SCHNEIDER,

Defendants.

**AFFIDAVIT OF JENNIFER M. LUTHER IN SUPPORT OF
MOTION FOR SANCTIONS**

STATE OF WISCONSIN)
)
) ss.
COUNTY OF DANE)

JENNIFER M. LUTHER, being first duly sworn, on oath deposes and states as follows:

1. I am an attorney licensed to practice law in the State of Wisconsin and admitted to practice in the Western District of Wisconsin.
2. I am one of the attorneys representing Timothy and Margaret O'Brien in the above-captioned matter.
3. I make this Affidavit on the basis of my personal knowledge of the facts set forth herein.

4. Attached hereto and incorporated herein as **Exhibit 1** is a true and correct copy of the Vilas County Sheriff's Deputy Report, No 13-004696, which is a matter of public record.

5. Attached hereto and incorporated herein as **Exhibit 2** is a true and correct copy of Vilas Title Service, Inc.'s tract search of documents duly recorded with the Vilas County Register of Deeds associated with the property located at 1125 Cranberry Shores Road, Eagle River, Wisconsin, which are a matter of public record.

6. Attached hereto and incorporated herein as **Exhibit 3** is a true and correct copy of Vilas County Sheriff's Deputy Report, No. 15-004675, which is a matter of public record.

7. Attached hereto and incorporated herein as **Exhibit 4** are a true and correct copies of two Service of Warning – Stalking letters, dated April 24, 2012, from the Vilas County Sheriff's Department to Timothy Upchurch, which are a matter of public record.

8. Attached hereto and incorporated herein as **Exhibit 5** is a true and correct copy of the Wisconsin Circuit Court Access electronic records report for Vilas County Case No. 13CM174.

9. Attached hereto and incorporated herein as **Exhibit 6** is a true and correct copy of the Wisconsin Circuit Court Access electronic records report for Vilas County Case No. 15CF61.

10. Attached hereto and incorporated herein as **Exhibit 7** is a true and correct copy of the transcript from the May 12, 2016 Sentencing Hearing in Vilas County Case No. 13CM174, which is a matter of public record.

11. Attached hereto and incorporated herein as **Exhibit 8** is a true and correct copy of the Wisconsin Circuit Court Access electronic records report for Vilas County Case No. 15CV64 and Vilas County Case No. 15 CV65.

12. Attached hereto and incorporated herein as **Exhibit 9** is a true and correct copy of the Stipulation and Agreement dated June 4, 2015 entered into in Vilas Count Case No. 15CV64 and Vilas County Case No. 15CV65, as a matter of public record.

13. Attached hereto and incorporated herein as **Exhibit 10** is a true and correct copy of the Stipulation and Agreement dated January 27, 2016 entered into in Vilas County Case No. 15CV64 and Vilas County Case No. 15CV65, as a matter of public record.

14. Attached hereto and incorporated herein as **Exhibit 11** is a true and correct copy of a Motion to Withdraw Plea in Vilas County Case No. 15CF61 filed on behalf of Timothy Upchurch, which is a matter of public record.

15. Attached hereto and incorporated as **Exhibit 12** is a true and correct copy of Motion for Discovery in Vilas County Case No. 15CF61, filed on behalf of Timothy Upchurch, which is a matter of public record.

16. Attached hereto and incorporated as **Exhibit 13** is a true and correct copy of the Amended Criminal Complaint filed in State of Wisconsin v. Timothy J. Upchurch, Vilas County Case No. 15CF61, which is a matter of public record.

17. Attached hereto and incorporated as **Exhibit 14** is a true and correct copy of Vilas County Sheriff's Department Deputy Report for Incident 13-004395, which is a matter of public record.

18. Attached as **Exhibit 15** is a true and correct copy of the "safe harbor" letter that I served on Plaintiff's counsel on May 6, 2019, pursuant to Fed. R. Civ. P. 11(c)(2).

19. Said letter enclosed a copy of the Motion for Sanctions that is being filed contemporaneously with this Affidavit. Said letter informed Plaintiff that Timothy and Margaret O'Brien would file the enclosed Motion for Sanctions if Plaintiff's Complaint against the O'Briens was not voluntarily dismissed with prejudice within 21 days from when the letter was served.

20. It has been more than 21 days since said letter was served, and Plaintiff has not voluntarily withdrawn his Complaint against the O'Briens.

Dated this 29th day of May, 2019.

/s/ Jennifer M. Luther
Jennifer M. Luther

Subscribed and sworn to before me
this 29th day of May, 2019.

/s/ Megan J. Jerke
Notary Public, State of Wisconsin
My commission expires: March 28, 2022.